IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

FIRST APPEAL NO.483 OF 1992.

Union of India : Appellants.

versus

M/s.Eknath Khemchand & Co.

& Anr. : Respondents.

Mr.A.N.Samant for the appellants.

None for the respondents.

CORAM : D.G.DESHPANDE,J.

DATED : 28th APRIL 2005.

ORAL ORDER

1. Heard Mr.Samant for the Union of India. Nobody is present for the respondents though they are served. Only one question was pressed by Mr.Samant in this appeal i.e. regarding limitation. No other questions were raised by him. According to him and as per the record the consignment was booked by the claimant under RR

No.869251 on 6th February 1986. The claimant gave notice under Section 80 of the Code of Civil Procedure June 1986 itself. Three years period for filing of suit expired on 5.2.1989 Suit was filed on 14.3.1989. Therefore it was barred by limitation. My attention was invited to para 12 of the judgment wherein this Issue of limitation was considered. The tribunal observed "Even if the booking date is taken, the suit was filed within 3 years and 2 months and accordingly the suit was within limitation." These findings are wrong, according to Mr.Samant and, I have no hesitation in accepting his submission. If the notice under Section 80 was given at a time when the three years period was to expired then the claimant would have been entitled to two months' extension. But the notice was given in June 1986 itself. Therefore, the claimant cannot get extension of two months. He should have been filed suit within three years i.e. on or before 5.2.1989. The suit is admittedly filed on 14.3.1989. It is barred by limitation. Therefore, the appeal has to be allowed and since this point goes to the root of the matter, I am not considering the other submissions made by Mr.Samant. Hence the appeal is allowed. The

judgment and decree of the tribunal is set aside and quashed. Claim petition of the original claimant is dismissed with costs before the tribunal. No order to costs of this appeal.

[D.G.DESHPANDE]

28/04/2005 JUDGE.